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1945

August 11, 1922.

Report of operation of the Delaware Water Co. disinfection plant to the Ohio State Department of Health—Continued.

DECEMBER, 1921.

Date.	Total water treated (thousands of gallons).	Pounds.		Temperature of water.	Parts per million.			Bacterial results.								
		Hypo.	Liq. Cl.		Turbidity.	Color.	Iron.	20° C— 48 Hrs.		37° C— 24 Hrs.		Presumptive B. Coli.				
								Raw.	Disinf.	Raw.	Disinf.	Bile—Broth.				
												Raw.		Disinf.		
												1 c. c.	10 c. c.	1 c. c.	10 c. c.	
1.....	777	12	° F.													
2.....	878	14½														
3.....	976	15														
4.....	535	15														
5.....	1,013	14½														
6.....	879	15														
7.....	934	15														
8.....	1,053	16								2				0		0
9.....	901	15														
10.....	944	15														
11.....	815	13														
12.....	945	15½														
13.....	1,068	15½														
14.....	1,039	16								1				0		0
15.....	1,012	11														
16.....	1,141	14														
17.....	997	12½														
18.....	962	10½														
19.....	867	11														
20.....	1,038	10														
21.....	1,140	10								0				0		0
22.....	930	10														
23.....	1,003	12														
24.....	1,038	11														
25.....	950	10														
26.....	1,112	13½														
27.....	1,048	14														
28.....	1,063	11½														
29.....	954	12														
30.....	986	12														
31.....	1,027	11														
Total.....	30,025	1403									3			0/3		0/3
Average.....	968										1					
Maximum.....	1,140										2					
Minimum.....	535										0					

¹ 1.6 p. p. m.

OHIO LAW FOR ENFORCING CORRECTION OF STREAM POLLUTION AND IMPROVEMENT OF PUBLIC WATER SUPPLIES.

In 1908 the General Assembly of Ohio enacted a law commonly known as the Bense Act and codified as sections 1249 to 1261, inclusive, General Code of Ohio. This law was passed for the purpose of providing for correction of pollution of streams by sewage and other wastes from municipalities, institutions, industrial establishments, and other sources, and for the improvement of impure and unsafe public

water supplies of municipalities and public institutions. In 1919 this law was amended, and additional sections were enacted in 1921. The sections now read as follows:

SECTION 1249. Whenever the council or board of health, or the officer or officers performing the duties of a council or board of health, of a city or village, the commissioners of a county, the trustees of a township, or 50 of the qualified electors of any city, village, or township, or the managing officer or officers of a public institution set forth in writing to the State department of health that a city, village, public institution, corporation, partnership, or person is discharging or is permitting to be discharged sewage or other wastes into a stream, watercourse, canal, lake, or pond, and is thereby creating a public nuisance detrimental to health or comfort, or is polluting the source of any public water supply, the commissioner of health shall forthwith inquire into and investigate the conditions complained of.

SEC. 1250. If the commissioner of health finds that the discharge of sewage or other wastes from a city, village, or public institution, or by a corporation, partnership, or person, has so corrupted a stream, watercourse, canal, lake, or pond as to give rise to foul and noxious odors or to conditions detrimental to health or comfort,¹ the source of public water supply of a city, village, community, or public institution is subject to contamination, or has been rendered impure by such discharge of sewage or other wastes, he shall notify the mayor or managing officer or officers of such city, village, public institution, or corporation, partnership, or person, of his findings and of the time and place when and where a hearing may be had before the public health council. The notice herein provided shall be by personal service or by registered letter.

SEC. 1251. After such hearing if the public health council shall determine that improvements or changes are necessary and should be made, the commissioner of health shall notify the mayor or managing officer or officers of such city, village, public institution, or corporation, partnership, or person, to install works or means, satisfactory to the commissioner of health, for purifying or otherwise disposing of such sewage or other wastes, or to change or enlarge existing works, in a manner satisfactory to the commissioner of health. Such works or means must be completed and put into operation within the time fixed in the order. The order of the commissioner of health and the time fixed for making the improvements or changes shall be approved by the public health council, and notification shall be had by personal service upon or by registered letter to the mayor or managing officer or officers of the city, village, public institution, or corporation, partnership, or person to whom said order shall apply. But no city or village discharging sewage into a river which separates the State of Ohio from another State shall be required to install sewage purification works so long as the unpurified sewage of cities or villages of another State is discharged into such river above such city or village of this State.

SEC. 1252. Whenever the board of health or officer or officers performing the duties of a board of health of a city or village or 10 per cent of the electors thereof or the managing officer or officers of a public institution shall file with the State department of health a complaint, in writing, setting forth that it is believed that the public water supply of such city or village or public institution is impure and dangerous to health, the State commissioner of health shall forthwith inquire into and investigate the conditions complained of.

SEC. 1253. If the commissioner of health finds that the public water supply of a city, village, or public institution is impure and dangerous to health and that it is not practicable to sufficiently improve the character of such supply by removing the source or sources of pollution affecting it, or if the commissioner of health finds that such water supply is being rendered impure and dangerous to health by reason of

¹ Words "or that" omitted in engrossing.

improper construction or inadequate size of existing water purification works, he shall notify such city, village, or public institution, corporation, partnership or person owning or operating such water supply or waterworks of his findings and of the time and place, when, and where a hearing may be had before the public health council. Such notice shall be by personal service or shall be sent by registered letter to the mayor or managing officer or officers of the city, village, public institution, or corporation, partnership, or person owning or operating such water supply or waterworks.

SEC. 1254. After such hearing, if the public health council shall determine that improvements or changes are necessary and should be made, the commissioner of health shall notify the mayor or managing officer or officers of the city, village, public institution, or corporation, partnership, or person owning or operating such water supply or waterworks to change the source of supply or to install and place in operation water purification works or device satisfactory to the commissioner of health, or to change or enlarge existing water purification works in a manner satisfactory to said commissioner. The order of the commissioner of health and the time fixed for making the improvements or changes shall be approved by the public health council and notification shall be had by personal service upon or by registered letter to the mayor or managing officer or officers of the city, village, public institution, or corporation, partnership, or person to whom said order shall apply.

SEC. 1252-4. When the commissioner of health finds upon investigation that a public water supply is subject to the danger of contamination by reason of unsatisfactory location, protection, construction, operation, or maintenance of the system, or by reason of the existence of an unsafe emergency supply or connection to an unsafe private or auxiliary supply, or if the commissioner of health finds upon investigation that the public health is endangered by reason of the existence of an inadequate public water supply or waterworks system, he shall notify the city, village, county, public institution, corporation, partnership, or person owning or operating such public water supply or waterworks system of his findings and of the time and place, when, and where a hearing may be had before the public health council. Such notice shall be by personal service, or shall be sent by registered letter to the mayor or managing officer or officers of the city, village, county, or public institution, or to the corporation, partnership, or person owning or operating such supply. Investigations made in accordance with this section may be at the initiative of the commissioner of health.

SEC. 1252-5. After such hearing, if the public health council shall determine that improvements or changes are necessary and should be made, the commissioner of health shall notify the mayor or managing officer or officers of the city, village, county, or public institution, or the corporation, partnership, or person owning or operating such water supply or waterworks system to make improvements, corrections, and changes in the location, protection, construction, operation, or maintenance of the water supply or waterworks system satisfactory to the commissioner of health, so as to prevent the contamination of the water supply or to provide a water supply not subject to the danger of contamination, or to provide a water supply and waterworks system adequate to avoid endangering the public health. The order of the commissioner of health and the time fixed for making the improvements or changes shall be improved by the public health council and the notification shall be made by personal service upon or by registered letter to the mayor or managing officer or officers of the city, village, county, or public institution, or to the officials, corporation, partnership, or person to whom said order shall apply. When such order is issued, subsequent procedures shall be in accordance with and governed by the provisions of sections 1257, 1258, 1258-1, 1258-2, 1258-3, 1258-4, 1258-5, 1258-6, 1258-7, 1258-8, 1259, 1259-1, 1260, and 1261 of the General Code.

SEC. 1255. When the commissioner of health finds upon investigation that any water-purification or sewage-treatment works, on account of incompetent supervision or inefficient operation, is not producing an effluent of such quality as might be reason-

ably obtained from such water-purification or sewage-treatment works, and by reason of such neglect the public water supply has become impure and dangerous to health, or that a stream, watercourse, canal, lake, pond, or body of water has become offensively polluted or has become a public nuisance or that a public water supply taken from such stream, watercourse, canal, lake, pond, or body of water has been rendered impure and dangerous to health, the commissioner of health shall issue an order to the mayor or managing officer or officers of the city, village, public institution, or corporation, partnership, or person having charge of or owning such water-purification or sewage-treatment works to secure an effluent of such quality as might be reasonably expected from such works and satisfactory to the commissioner of health.

SEC. 1256. If the managing officer or officers of such city, village, public institution, or corporation, partnership, or person fails, for a period of five days after receiving such order, to secure an effluent satisfactory to the commissioner of health, the commissioner of health shall report the fact to the public-health council and upon its approval may order such managing officer or officers or person owning such works to appoint within 10 days, and pay the salary of a competent person to be approved by the commissioner of health, to take charge of and operate such works as to secure the results demanded by the commissioner of health.

SEC. 1257. If the findings or order of the commissioner of health, when approved by the public-health council and made in pursuance of the provisions of this chapter relating to stream pollution and public water supply, are not acceptable to any city, village, public institution, corporation, or owner effected [affected] thereby, such city, village, public institution, corporation, or owner shall have the right of appeal as follows: Two reputable and experienced sanitary engineers shall be chosen, one by the city, village, public institution, corporation, or owner and the other by the commissioner of health, who shall not be a regular employee of the State department of health. Such persons shall act as referees. If the referees so chosen are unable to agree, they shall choose a third engineer of like standing, and the vote of the majority shall be final. As soon as such referees are chosen, the commissioner of health shall file with them a certified copy of the complaint and the findings and order of the State department of health, and it shall be the duty of such referees to investigate the conditions complained of and to determine if such findings are correct and if the order provides a proper remedy for such conditions. The appeal provided for in this section shall be made within 30 days from the date of service of the order upon the mayor or managing officer or officers of the city, village, public institution, or corporation or owner, and notice thereof in writing shall be served upon the commissioner of health by personal service for which there shall be acknowledgment, or sent by registered letter.

SEC. 1258. Such referees may affirm or reject the findings or order of the commissioner of health or may modify such order as to the time within which improvements or changes shall be made, and their decision, which must be in writing, and be made within a reasonable time, shall be reported to the commissioner of health and to the city, village, public institution, corporation, or owner and shall be final except as hereinafter provided. If said findings and order shall be approved or modified by said referees, the order shall be enforced by the commissioner of health in the manner provided for in this chapter. The fees and expenses of the referee appointed by the commissioner of health shall be paid from funds appropriated to the State department of health for such purpose. The fees and expenses of the referee appointed by the city, village, public institution, corporation, or owner shall be paid by the city, village, public institution, corporation, or owner making such appeal. The fees and expenses of the third referee shall be equally divided between the State department of health and the city, village, public institution, corporation, or owner making appeal.

SEC. 1258-1. Where an order of the commissioner of health to a corporation, partnership, or person owning and operating a waterworks is approved or modified by the referees provided for in sections 1257 and 1258 of the General Code, or if such corpora-

tion, partnership, or person shall accept such order without appeal to such referee, and it shall be claimed by such corporation, partnership, or person that the revenues derived from the operation of such waterworks are not sufficient to warrant the expense of making the improvements or changes so ordered, an application may be made to the public utilities commission of Ohio for authority to make and collect additional charges from the water consumers and users of the utility's service. Upon the filing of such application the commission shall fix a time for the hearing thereof and give notice thereof to the mayor of the municipality and the State commissioner of health, and if upon hearing the public utilities commission shall determine and find that the rates theretofore authorized to be charged will not provide revenue sufficient to operate said waterworks and make a reasonable return upon the investment after such improvements and changes are made, it shall by order authorize the collection of such additional charges and compensation as may under all the circumstances be just and reasonable.

SEC. 1258-2. An order as made by the commissioner of health or as approved or modified by the referees as herein provided shall be reversed, vacated, or modified by the supreme court on a petition of error if upon consideration of the record such court is of the opinion that such order was unlawful and unreasonable.

SEC. 1258-3. The proceeding to obtain such reversal, vacation, or modification shall be by petition in error, filed in the supreme court by the municipal corporation, managing board, or officer of a public institution, corporation, partnership, or person to which such order of the commissioner of health shall apply, setting forth the errors complained of; thereupon, unless the same is duly waived, a summons shall issue and be served, as in other cases, upon the commissioner of health, or in his absence by leaving a copy at his office at the city of Columbus.

SEC. 1258-4. Upon service or waiver of summons in error the commissioner of health shall forthwith transmit to the clerk of the supreme court a transcript of his journal entries, original papers or transcripts thereof, and a certified copy of all evidence adduced upon the hearing before the public-health council in the proceeding complained of, which shall be filed in said court.

SEC. 1258-5. No proceeding to reverse, vacate, or modify an order of the commissioner of health shall be deemed commenced unless the petition therefor is filed within 30 days after service of the order upon the mayor or managing officer or officers of the municipal corporation, public institution, or corporation, partnership, or person to whom such order shall apply. Or if there has been an appeal to referees then such petition shall be filed within two weeks after the determination of such appeal and due notice thereof. A proceeding to reverse, vacate, or modify an order of the commissioner of health shall operate to stay execution thereof until the supreme court shall render a decision thereon.

SEC. 1258-6. No court other than the supreme court shall have the power to review, suspend, or delay any order of the commissioner of health, or enjoin, restrain, or interfere with the commissioner of health or public-health council in the performance of official duties required or power exercised under the provisions of this act.

SEC. 1258-7. All orders heretofore issued or promulgated by the State board of health or by the State department of health shall continue in full force and have the same effect as though they had been lawfully made, issued, or promulgated under the provisions of this act.

SEC. 1258-8. Each section of this act and every part thereof is hereby declared to be an independent section, and part of a section, and the holding of a section or part of a section thereof to be void or ineffective for any cause shall not be deemed to affect any other section or part thereof.

SEC. 1259. Each municipal council, department, or officer having jurisdiction to provide for the raising of revenues by tax levies, sale of bonds, or otherwise shall take

all steps necessary to secure the funds for any such purpose or purposes. When the funds are so secured, or the bonds therefor have been authorized by the proper municipal authority, such funds shall be considered as in the treasury and appropriated for such particular purpose or purposes, and shall not be used for any other purpose. The bonds authorized to be issued for any such purpose or purposes shall not exceed 3 per cent of the total value of all property in any city or village, as listed and assessed for taxation, and may be in addition to the total bonded indebtedness of such city or village otherwise permitted by law. The question of the issuance of such bonds shall not be required to be submitted to a vote of the electors.

SEC. 1259-1. Interest and sinking-fund levies on account of bonds issued under section 1259 of the General Code, in compliance with orders of the State commissioner of health, shall be exempt from all the limitations on tax levies provided by sections 5649-2 and 5649-3a of the General Code. Such levies shall also be exempt from the limitation provided by section 5649-5b of the General Code, if the question of making such additional levy shall be submitted to the electors of the municipality issuing, or proceeding to issue, such bonds in the manner provided in sections 5649-5 and 5649-5a of the General Code, and the same is approved by a majority of the electors voting on such question; and the proper legislative authorities of any such municipal corporation are hereby authorized to submit such question in the manner provided in said sections of the General Code at any regular election or at a special election. The number of years for which such levy shall be authorized shall not be required to be printed on the ballot, and the approval of the electors shall constitute sufficient authority for the making of such additional levy annually, during the time for which the bonds are to run, or until the same are redeemed, or the redemption thereof with interest is fully provided for.

SEC. 1260. If a council, department, or officer of a municipality, or person, partnership, or private corporation fails or refuses for a period of 30 days, after notice given him or them by the commissioner of health of his findings and order and the approval thereof by the public-health council, to perform any act or acts required of him or them by this chapter relating to stream pollution and public water supply, the members of such council or department, or such officer or officers, person, partnership, or private corporation shall be personally liable for such default, and shall forfeit and pay to the State of Ohio \$500, to be paid into the State treasury to the credit of the general revenue fund.

SEC. 1261. An action may be begun for the recovery of such penalty by the prosecuting attorney of a county in the name of the State in the court of common pleas of such county having jurisdiction of any such party or parties, or it may be begun by the attorney general in such county or the county of Franklin, as provided by law. The court of common pleas, upon good cause shown, may, at its discretion, remit such penalty or any part thereof.

DECISIONS OF UNITED STATES SUPREME COURT CONSTRU- ING HARRISON NARCOTIC ACT.

The following are decisions of the United States Supreme Court construing the Harrison Narcotic Act:

Mr. Chief Justice TAFT delivered the opinion¹ of the court:

This is a writ of error to the district court under the criminal appeals act of March 2, 1907 (34 Stat. 1246). Defendants in error were indicted for a violation of the narcotic act of December 17, 1914 (38 Stat. 786). The indictment charged them with unlawfully selling to another a certain amount of a derivative of opium and a certain amount of a derivative of coca leaves, not in pursuance of any written order on a form issued in blank for that purpose by the Commissioner of Internal Revenue, contrary to the provisions of section 2 of the act. The defendants demurred to the indictment on the ground that it failed to charge that they had sold the inhibited drugs knowing

¹ United States v. Balint et al.